JUDGE PARSONS MAKES STRONG PLEA FOR LEGAL REFORMS

(Continued from page eleven)

One can imagine circumstances in which the accused may say what he does not mean, or may criminate himself unjustly. True, and we can cite cases of mistaken identity, cases where innocent men have been convicted upon circumstantial evidence, nay even cases where the defendant's own confessions have proved false, but we do not on that account exclude the evidence of eye-witnesses, the admissions of the accused, or circumstantial evidence. Nothing human is perfect, no testimony is infallible, but of all evidence which tends to establish the defendant's guilt, his own is least likely to be unreliable. He may, and in most cases does lie to save himself, but never if he knows it to accuse himself.

"This rule in question, originally adopted to save the subject from the tyrannical power of the crown when men were persecuted for religious opinions, for political offenses, for writing or speaking the truth, is preserved, though the reason for it has long disappeared. The danger now is, not that innocent men will be convicted, but that guilty men shall go unwhipped of justice."

4, 5 and 6. Reversal Upon Merits, Final Judgment In Appellate Court, And Findings Of Fact:

These three subjects will be considered together. They are embraced in a bill drafted by the American Bar Association and now before Congress. The bill relates to practice in the federal courts and provides as follows:

"No judgment shall be set aside, or reversed, or new trial granted, by any court of the United States in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties. The trial judge may in any case submit to the jury the issues of fact arising upon the pleadings, reserving any question of law arising in the case for subsequent argument and decision, and he and any court to which the case shall thereafter be taken on writ of error shall have the power to direct judgment to be entered either upon the verdict or upon the point reserved, if conclusive, as its judgment upon such point reserved may require."

Through the efforts of the State Bar Associations similar laws have been enacted in the New England states, in New York, in New Jersey, Ohio, Wisconsin, Kansas, Oregon, and, by constitutional amendment, in California. The U. S. supreme court has shown itself to be in sympathy with this reform by its recently adopted equity rules. "This amendment to the law by statute, constitutional amendment and rule," says Mr. Alger, in the January number of The World's Work, "indicated above, does not fairly express the full measure of this particular reform. Influenced by public opinion, the courts in other states in which no such legislative reform has taken place today are disregarding technical errors which they would have found serious 10 years ago. Indeed, there is no real need for these statutes amending the law, except, as the Chinese say, 'to save the face' of the courts. The trouble from which these statutes give them an excuse for escaping was one of their own devising. It is more dignified, however, for the courts to declare in the states in which these statutes have now been enacted that they are complying with a new statute than to say frankly that they had heretofore done wrong in magnifying the importance of technicalities by which they had created a vast number of precedents Equity Rules. "This amendment to resolved to mend their ways and do right."

Quoting from the same author in the February number of The World's Work: "A new note is being sounded. A few judicial utterances which sound that new note may not be inappropriate. Take, for example, a recent case in the supreme court of Wisconsin, in which, after over-ruling a number of its own decisions and refusing to follow the United States supreme court, it held that a defendant who remained silent waived his right to arraignment and plea. The fact that the record on appeal did not disclose that he had been arraigned and asked to plead guilty or not guilty, the court declared, did not affect his substantial rights. The court says: 'Surely the defendant should have everyone of his constitutional rights and privileges, but should he be permitted to juggle with them? Should he be silent when he ought to ask for some minor right which the court would at once give him, and then when he has had his trial and the issue has gone against him, should he be heard to say there was error because he was not given his right? Should he be allowed to play his game with loaded dice? Should justice travel with leaden heel because the defendant had stored up some technical error not affecting the merits, and thus secure a new trial because, forsooth, he has waived nothing? We think not.'

"Perhaps it is due to discouraging decisions like these that the percentage of appeals in criminal cases is far smaller in Wisconsin in proportion to the number of convictions than it is in Iowa. At least this is the reasoning of the attorney-general of Iowa.

would have found serious 10 years aright in the attitude of its courts toward crime. In a decision rendered in 1909, its supreme court declared, in refusing to grant a new trial for a defect that was found in an indictment: 'This court proposes to give to the people of this state a just and harmonious system of criminal jurisprudence, founded on justice and supported by reason, free from the mysticism of arbitrary technicalities. This standard will control our decisions, it matters not what or how many other appellate courts may have decided to the contrary.'

In Regard to Special Verdicts

Section 1803 of our revised laws provides that in civil cases, except in instances named, "the court, by the consent of parties, instead of directing the jury to give a general verdict, may direct the jury to answer any questions of fact stated to them by the court for that purpose, and in such case the jury shall answer such questions and shall not give any verdict, and on the finding of the jury on the questions which they answered, the court shall enter the verdict, and the verdict so entered shall be as effectual and shall be open to the same objections and modes of attack (if moved against) as if the same had been the verdict of the jury."

This provision, admirable so far as it goes, has not been invoked in recent years, if indeed, it has ever been invoked in this circuit and beyond doubt the reason for its neglect is that it is only available "by consent of the parties." The right to render a general verdict frequently obscures the real issues and gives play to prejudices which should have no part in the deliberations of the jury room. Again quoting Mr. Storey: "The way to avoid the influence of these prejudices is to make the jury decide the real issues involved. When the jury is required to answer direct questions, they are forced to consider the real issues of facts, and the verdict settles the facts once for all. The court can then order a verdict one way or the other, and let the appellate court, if it does not confirm the ruling, order such a judgment upon the findings as the law requires. The province of the jury is to find facts and assess damages, and to this province they should be limited. If the jury were regularly asked in accident cases such questions as: 'Was the defendant negligent?' 'If so, in what did the negligence consist?' or if the claim is that the plaintiff did not exercise due care by omitting some precaution or doing some careless thing, the judge were to submit the question whether he did do the thing or omit the precaution suggested, the jury would in fact deal with the questions, which, in theory, they must decide in order to reach a verdict, but which, in practice, may or may not receive their attention. Were this system adopted the parties would not be compelled to try questions of fact again, because the judge at the trial erred in his views of liability upon these facts. One trial would suffice to establish the facts, and a verdict upon them could only be set aside for flagrant errors in omitting or excluding evidence which bore upon these issues.

"In dealing with questions of evidence, the Appellate Court should be given liberal discretion to sustain the verdict where it is reasonably apparent that the admitted or excluded evidence ought not to have changed the jury's conclusions, or that the judgment of the court below was in itself just. Remembering that the trial judge may always set aside an improper verdict, and that the case rarely reaches the appellate court until the power has been invoked, the slight chance of injustice arising from an error in dealing with evidence committed both by the trial judge and the appellate court is infinitesimal as compared with the injustice done by the present practice, and the delay and expense to which not only the parties but all litigants in the same court are put to by repeated new trials."

No better summing up of the situation can be found than in the words of Professor Judson, found in a copy of his work on a page to which the volume readily opens. "The situation in this country in our judicial procedure is the more intolerable, and indeed indefensible, when we consider that it is now recognized by the students of historical jurisprudence that extreme technicality is a sign of an undeveloped system of law, in which legal rights are subordinate to the procedure to enforce them, wherein the substance is secondary to the form. Centuries ago the main business of the courts was in ascertaining rules that litigants should follow, and this extreme technicality and formalism in the early days of society was a step, but only the first step, towards a rational system for determining controversies. It is better than private war. That is the determination by chance and wager of battle was an advance upon that primitive state where men took the law into their own hands. We now recognize that the demand for simplicity in procedure does not spring from ignorant reformers and radical iconoclasts, but is a progressive step in the rational advance of a progressive jurisprudence. Forms were regarded with superstitious reverence in the early stages of society, but we now recognize that the simpler the procedure the better it serves its purposes. It does not mean that accuracy and precision of statement in judicial procedure shall be any less important than they are now, or that a clear and concise statement of facts in issue will not always be effective. Substance and not form, however, must be of the first importance. It does not mean that we shall substitute haste and want of consideration for deliberation and judgment; but it does mean that our judicial machinery must be so modeled that justice can be literally brought home to the people, and that busy men can afford to litigate the complicated question arising in our complex industrial life."

In Hawaii the hope of a remedy for at least a portion of the evils complained of lies in prospective legislation, in a genuine attempt on the part of trial courts to reach the merits of cases before them as best they may under whatever procedure the law provides. It lies in the assistance of counsel in presenting to juries only such matters as the jurors have a legal right to consider and in abstaining from pleadings intended for delay and objections, which do not go to the merits of cases. It lies in the training of juries to disregard immaterial matters and to understand that a proper verdict, whether general or special, means in the end the answering of certain specific questions of fact presented by the evidence and stated by the court, and above all else, it lies in an appellate procedure, either provided by statute or adopted without legislative enactment which, to paraphrase Mr. Wigmore, makes an appellate hearing a search for justice rather than a quest for error.

Though there is little cause for complaint as to grand juries, they, too, can help by observing the legal division of functions in criminal proceedings; by keeping well within their province and by presenting to the court no matters with which the court has not plenary power to deal. There are 11 commitments upon our calendar for the present session. It is your task to examine those commitments with a view to finding whether or not the facts warrant indictment and to enquire into such other matters as may properly be brought to your attention by the court, the prosecuting officer, or one of your own number; and to aid you in your work you will have the service of one or more of the public service prosecutors who will, if required, read you the rules of the supreme court relative to grand jury proceedings and who will advise you as to the law of all cases coming before you.

OVER-NIGHT ASSOCIATED PRESS NEWS

POLYGAMY FOUNDER ALLEGED WHITE SLAVER

SEATTLE, Wash.—Rev. Bart Dahlstrom, founder of the religious sect known as "Heliga," which believes in and preaches polygamy, was convicted here yesterday in violation of the Mann white slave act in transporting Miss Edna Englund of Tacoma from Fresno, Cal., to the state of Washington. It was developed at the trial that Reverend Dahlstrom lived in his home with three women, two of whom were Miss Englund and her sister and the other a woman who claims she was actually married to the preacher. Reverend Dahlstrom, who is said to come originally from North Dakota, was arrested on complaint of Miss Englund, who claimed that she entered Dahlstrom's home on his promise that he would marry her. Miss Englund lived in the home with the other two women some time and with the knowledge of the relationship of Dahlstrom to her sister as well as the other woman.

MEXICAN SOLDIERS MUTINY AND KILL LEADER

CITY OF MEXICO.—Gen. Florencio Alatriste, commanding an army of a thousand men at Jejuila, in the state of Morelos, was killed yesterday by his own men, who mutinied under the leadership of four lieutenants.

Other higher officers of the command who made their escape hurried to neighboring villages, organized a punitive expedition, returned to Jejuila and whipped the mutineers.

The rout was complete and the majority of the mutineers who surrendered into the hands of the hurriedly organized reprising army were executed.

WILSON'S DAUGHTER ELEANOR IS NOW ENGAGED

WASHINGTON, D. C. — President and Mrs. Woodrow Wilson yesterday announced the engagement of their daughter, Miss Eleanor Randolph Wilson, to William Gibbs McAdoo, secretary of the treasury in President Wilson's cabinet. Though no announcement of the wedding date has been made it is believed that the nuptials will take place in June or July.

IRISH LEADERS WANT TO EXHIBIT

LONDON, Eng.—John Redmond, Joseph Devlin, T. P. O'Connor and other leading Irishmen addressed a memorial yesterday to Premier Asquith asking him to urge reconsideration by the government of its refusal to participate in the Panama-Pacific exposition in San Francisco in 1915.

INJURED FIGHTING BANDITS.

PEORIA, Ill.—Two men were killed and two deputy sheriffs and a woman were wounded in a pitched battle between officers and citizens and a band of train robbers who attempted to holdup a Chicago & Northwestern freight train yesterday at Manlius, Ill. The woman was injured by a stray bullet during the progress of the fight.

With a view to making an inspection of the various Japanese plantation camps on Hawai, and also for making an investigation of labor conditions among his countrymen, Hachiro Arita, acting consul for Japan, is planning to leave for the Big Island March 28.